



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0827/1
MES:emw&kjf

2019 ASSEMBLY BILL 769

January 21, 2020 - Introduced by Representatives BALLWEG and HESSELBEIN, cosponsored by Senators KOOYENGA and SMITH. Referred to Committee on Ways and Means.

1 **AN ACT** *to renumber and amend* 71.05 (6) (b) 32. ae. and 71.05 (6) (b) 32m.; and
2 *to amend* 71.05 (6) (a) 26. a., 71.05 (6) (a) 26. b., 71.05 (6) (a) 26. c., 71.05 (6)
3 (b) 32. (intro.), 71.05 (6) (b) 32. a. and 71.05 (6) (b) 32. am. of the statutes;
4 **relating to:** modifying the individual income tax treatment for contributions
5 to and withdrawals from a college savings account and modifying an
6 administrative rule of the Department of Financial Institutions related to the
7 college savings program.

Analysis by the Legislative Reference Bureau

This bill modifies the individual income tax treatment for contributions to and withdrawals from a college savings account and modifies an administrative rule of the Department of Financial Institutions related to the college savings program.

Under current law, the College Savings Program Board, which is administratively attached to DFI, administers the state's college savings programs, commonly known as "Edvest" and "Tomorrow's Scholar." The programs are qualified tuition programs authorized under federal law. Under the programs, anyone may contribute to an account, commonly called a "529 account," for the benefit of a prospective student, regardless of the contributor's relationship to the beneficiary, and a prospective student may be the beneficiary of more than one account. Contributions to an account have certain tax advantages under federal and state law.

ASSEMBLY BILL 769

The bill makes the following changes to the state individual income tax treatment for contributions to and withdrawals from 529 accounts:

1. Increases the maximum contribution amount an individual may deduct from the contributor's income. Under current law, the maximum amount for 2019 is \$3,280 (or \$1,640 for each contributor who is married and files separately) and is indexed for inflation. The bill increases the maximum amount to \$5,000 (or \$2,500 for each contributor who is married and files separately) and eliminates indexing. The bill also eliminates a provision under current law that limits the maximum deduction amount for divorced parents to \$1,640 for each former spouse.

2. Modifies the contribution deadline for state tax purposes. Under current law, a contribution made during a taxable year, or on or before April 15 following the end of the taxable year, may be deducted from the contributor's income for the taxable year. The bill provides that a contribution for a taxable year must be made on or before the date on which the contributor is required to file the contributor's state income tax return, not including any extension, for the taxable year.

3. Modifies the 365-day restriction under current law that applies to account withdrawals. Under current law, any amount withdrawn from an account within 365 days of the day on which the amount was contributed to the account must be added to income if the amount was previously deducted from income. The bill limits the 365-day restriction to apply only to withdrawn amounts that were rolled over to the account from another state's qualified tuition program within 365 days of withdrawal.

4. Modifies the 365-day restriction under current law with respect to carry-overs. Under current law, a contribution to an account in excess of the maximum deduction amount may be carried forward to future taxable years, but the carry-over is not allowed if the carry-over amount was withdrawn from the account within 365 days of the day on which the amount was contributed to the account and if the amount was previously deducted from income. The bill limits the 365-day restriction with respect to carry-overs to apply only to withdrawn amounts that were rolled over to the account from another state's qualified tuition program within 365 days of withdrawal.

5. Requires the use of a first in, first out method of accounting for purposes of the 365-day restrictions described under items 3 and 4 and for purposes of other additions to income under current law that relate to account withdrawals.

The federal Tax Cuts and Jobs Act of 2017 amended the definition of "qualified higher education expense" under federal law for purposes of state qualified tuition programs. Under the current federal definition, 529 accounts may be used to pay for expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school. The bill modifies the definition of "qualified higher education expense" in the state individual income tax law to conform to the definition under federal law. The bill also modifies an administrative rule of DFI to conform that definition to federal law.

ASSEMBLY BILL 769

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (6) (a) 26. a. of the statutes is amended to read:

2 71.05 (6) (a) 26. a. To the extent that the receipt of such ~~the~~ amounts by the
3 owner or beneficiary of the account results in a penalty as provided in 26 USC 529
4 (c) (6), any amount that was not used for qualified higher education expenses, as that
5 ~~term~~ is defined in 26 USC 529 (c) (7) and (e) (3), and ~~that~~ was contributed to the
6 account after December 31, 2013, except that this subd. 26. a. applies only to amounts
7 for which a subtraction was made under par. (b) 32. or 32m. For purposes of this
8 subd. 26. a., a first in, first out method of accounting applies to the account.

9 **SECTION 2.** 71.05 (6) (a) 26. b. of the statutes is amended to read:

10 71.05 (6) (a) 26. b. Any amount rolled over by an owner into another state's
11 qualified tuition program, as described in 26 USC 529 (c) (3) (C) (i), to the extent that
12 the amount was previously claimed as a deduction under par. (b) 32. or 32m. For
13 purposes of this subd. 26. b., a first in, first out method of accounting applies to the
14 account.

15 **SECTION 3.** 71.05 (6) (a) 26. c. of the statutes is amended to read:

16 71.05 (6) (a) 26. c. To the extent that an amount is not otherwise added back
17 under this subdivision, any amount withdrawn from ~~a college savings~~ the account,
18 ~~as described in s. 224.50,~~ for any purpose if the withdrawn amount was ~~contributed~~
19 rolled over to the account from another state's qualified tuition program, as described
20 in 26 USC 529 (c) (3) (C) (i), within 365 days of the day on which the amount was
21 withdrawn from such an ~~the~~ account and if the withdrawn amount was previously

ASSEMBLY BILL 769**SECTION 3**

1 subtracted under par. (b) ~~32.~~ 32m. For purposes of this subd. 26. c., a first in, first
2 out method of accounting applies to the account.

3 **SECTION 4.** 71.05 (6) (b) 32. (intro.) of the statutes is amended to read:

4 71.05 **(6)** (b) 32. (intro.) An amount paid into a college savings account, as
5 described in s. 224.50, by the account owner, as defined in s. 224.50 (1) (a), or by any
6 other individual for the benefit of a beneficiary of the account in the taxable year in
7 which the contribution is made or on or before the ~~15th day of the 4th month~~
8 ~~beginning after the close of a taxpayer's date on which the contributor is required to~~
9 ~~file a return under s. 71.03 (6), not including any extension, for the taxable year to~~
10 which this subtraction relates, ~~by the owner of the account or by any other individual,~~
11 ~~for the benefit of any beneficiary of an account,~~ calculated as follows, except that each
12 amount that is subtracted under this subdivision may be subtracted only once:

13 **SECTION 5.** 71.05 (6) (b) 32. a. of the statutes is amended to read:

14 71.05 **(6)** (b) 32. a. Except as otherwise provided in this subdivision, an amount
15 equal to not more than ~~\$3,000~~ \$5,000 per beneficiary, by each contributor, or ~~\$1,500~~
16 \$2,500 by each contributor who is married and files separately, to an account for each
17 year to which the claim relates, except that the total amount for which a deduction
18 may be claimed under this subdivision and under subd. 33., per beneficiary by any
19 claimant may not exceed ~~\$3,000~~ \$5,000 each year, or ~~\$1,500~~ \$2,500 each year by any
20 claimant who is married and files separately. In the case of a married couple, the
21 total deduction under this subdivision and under subd. 33., per beneficiary by the
22 married couple may not exceed ~~\$3,000~~ \$5,000 each year. ~~In the case of divorced~~
23 ~~parents, the total deduction under this subdivision and under subd. 33., per~~
24 ~~beneficiary by the formerly married couple, may not exceed \$3,000, and the~~
25 ~~maximum amount that may be deducted by each former spouse is \$1,500, unless the~~

ASSEMBLY BILL 769

1 ~~divorce judgment specifies a different division of the \$3,000 maximum that may be~~
2 ~~claimed by each former spouse. For taxable years beginning after December 31,~~
3 ~~2013, the dollar amounts in this subd. 32. a., and the dollar amounts in subd. 33. a.,~~
4 ~~shall be increased each year by a percentage equal to the percentage change between~~
5 ~~the U.S. consumer price index for all urban consumers, U.S. city average, for the~~
6 ~~month of August of the previous year and the U.S. consumer price index for all urban~~
7 ~~consumers, U.S. city average, for the month of August 2012, as determined by the~~
8 ~~federal department of labor, except that the adjustment may occur only if the~~
9 ~~resulting amount is greater than the corresponding amount that was calculated for~~
10 ~~the previous year. Each amount that is revised under this subd. 32. a. and under~~
11 ~~subd. 33. a. shall be rounded to the nearest multiple of \$10 if the revised amount is~~
12 ~~not a multiple of \$10 or, if the revised amount is a multiple of \$5, such an amount~~
13 ~~shall be increased to the next higher multiple of \$10. The department of revenue~~
14 ~~shall annually adjust the changes in dollar amounts required under this subd. 32.~~
15 ~~a. and incorporate the changes into the income tax forms and instructions. Any~~
16 ~~amount that is paid into an account under this subdivision that exceeds the~~
17 ~~maximum amount that may be subtracted under this subdivision may be carried~~
18 ~~forward to the next taxable year, and thereafter, subject to the limitations in this~~
19 ~~subdivision.~~

20 **SECTION 6.** 71.05 (6) (b) 32. ae. of the statutes is renumbered 71.05 (6) (b) 32m.
21 b. and amended to read:

22 71.05 **(6)** (b) 32m. b. No ~~carryover~~ carry-over that would otherwise be
23 authorized under this subdivision ~~may be~~ is allowed if the ~~carryover~~ carry-over
24 amount was withdrawn from an a college savings account, as described in s. 224.50,
25 for any purpose ~~and the withdrawal occurred~~ within 365 days of the day on which

ASSEMBLY BILL 769**SECTION 6**

1 the amount was ~~contributed~~ rolled over to the account. For purposes of this subd.
2 32m. b., a first in, first out method of accounting applies to the account.

3 **SECTION 7.** 71.05 (6) (b) 32. am. of the statutes is amended to read:

4 71.05 **(6)** (b) 32. am. Any ~~carryover~~ carry-over amount that is otherwise eligible
5 for a subtraction under this subdivision ~~shall be~~ is reduced by an amount equal to
6 the amount of a withdrawal from an account that was not used for qualified higher
7 education expenses, as ~~that term is~~ defined in 26 USC 529 (c) (7) and (e) (3), to the
8 extent that the withdrawn amount exceeds the amount that is added to income under
9 par. (a) 26.

10 **SECTION 8.** 71.05 (6) (b) 32m. of the statutes is renumbered 71.05 (6) (b) 32m.
11 a. and amended to read:

12 71.05 **(6)** (b) 32m. a. Consistent with the limitations specified in subd. 32., for
13 rollovers occurring after April 15, 2015, any principal amount rolled over to a college
14 savings account, as described in s. 224.50, from another state's qualified tuition
15 program, as described in 26 USC 529 (c) (3) (C) (i). Amounts Subject to subd. 32m.
16 b., amounts eligible for the subtraction under this subdivision that are in excess of
17 the annual limits specified under subd. 32. may be carried forward to future taxable
18 years of the taxpayer without limitation, other than the limits specified in subd. 32.
19 ~~ae. and~~ am.

20 **SECTION 9.** DFI-CSP 1.02 (17) of the administrative code is amended to read:

21 DFI-CSP 1.02 **(17)** "Qualified higher education expenses" has the meaning
22 ~~found~~ given in section 529 (c) (7) and (e) (3) of the internal revenue code.

23 **SECTION 10. Initial applicability.**

24 (1) ADDITION TO TAX FOR NONQUALIFIED WITHDRAWALS PREVIOUSLY DEDUCTED. The
25 treatment of s. 71.05 (6) (a) 26. a. that amends the definition of qualified higher

ASSEMBLY BILL 769

1 education expenses to include a cross-reference to 26 USC 529 (c) (7) first applies
2 retroactively to taxable years beginning after December 31, 2017. The treatment of
3 s. 71.05 (6) (a) 26. a. to include a cross-reference to s. 71.05 (6) (b) 32m. and to require
4 the use of a first in, first out method of accounting first applies to taxable years
5 beginning on January 1 of the year in which this subsection takes effect, except that
6 if this subsection takes effect after July 31, the treatment first applies to taxable
7 years beginning on January 1 of the year following the year in which this subsection
8 takes effect.

9 (2) DEFINITION OF QUALIFIED HIGHER EDUCATION EXPENSE. The treatment of s.
10 71.05 (6) (b) 32. am. first applies retroactively to taxable years beginning after
11 December 31, 2017.

12 (3) TAX TREATMENT FOR CONTRIBUTIONS AND WITHDRAWALS. The treatment of s.
13 71.05 (6) (a) 26. b. and c. and (b) 32. (intro.), a., and ae. and 32m. first applies to
14 taxable years beginning on January 1 of the year in which this subsection takes
15 effect, except that if this subsection takes effect after July 31, the treatment first
16 applies to taxable years beginning on January 1 of the year following the year in
17 which this subsection takes effect.

18 **SECTION 11. Effective dates.** This act takes effect on the day after publication,
19 except as follows:

20 (1) The modification of administrative rules takes effect as provided in s.
21 227.265.

22 (END)